



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105

May 10, 2016

John Hay
Associate General Counsel
National Indian Gaming Commission
c/o Department of the Interior
1849 C Street NW, Mail Stop #1621
Washington, DC 20240

Subject: EPA comments on the Jamul Indian Village Draft Supplemental Environmental Impact Statement (DSEIS), San Diego County, California (CEQ# 20160072)

Dear Mr. Hay:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The DSEIS supplements the 2003 Final Environmental Impact Statement (FEIS) for Jamul Indian Village to address revisions to the proposed action that have occurred since the FEIS. Specifically, the project no longer includes a 101-acre fee-to-trust transfer, and the gaming facility has been revised to fit entirely on-Reservation. EPA understands that, without the fee-to-trust transfer, the project no longer requires BIA approval, and construction of the revised project was reevaluated in 2013 under a Tribal Environmental Evaluation (TEE) pursuant to the 1999 Tribal-State Compact process. The scope of the current proposed action is limited to the Gaming Management Agreement between the Tribe and the proposed operator San Diego Gaming Ventures, subject to approval by the National Indian Gaming Commission (NIGC). Because approval of the management contract is not a prerequisite to the Tribe's right to build a casino, the gaming facility is currently under construction and scheduled to open in the summer of 2016.

Although the TEE is not, itself, a NEPA document, it is incorporated by reference in the DSEIS and includes information regarding matters relevant to EPA's jurisdiction and expertise, including wastewater disposal. The project description in the Wastewater Addendum to the TEE indicates that most of the treated wastewater would be disposed within an on-Reservation disposal field. However, according to the letter reports in the Addendum, which document the soil conditions and percolation test methodology/results for the disposal field locations¹, the rock characterization within the effluent infiltration area identified fractures that could enable treated effluent flows to intersect groundwater and daylight along Willow Creek to the east and southeast of the infiltration areas. This indicates a potential hydrological connection between groundwater and surface waters. The Clean Water Act prohibits the discharge of any pollutant to surface waters of the United States without a National Pollutant Discharge Elimination System (NPDES) permit. Because of the potential hydrological connection identified, an

¹ Appendix 1, February 23, 2015 letter from Construction Testing and Engineering, Inc. to Jamul Indian Village of California with subject: *Summary of Percolation Rates and Rock Characterization for Proposed Stormchamber Infiltration Design, Jamul Indian Village Hollywood Casino, West Side of SR94, South of Melody Road, Jamul, California*

NPDES permit may be required for the proposed wastewater disposal; however, the SDEIS does not disclose this and EPA has not received an application for such a permit.

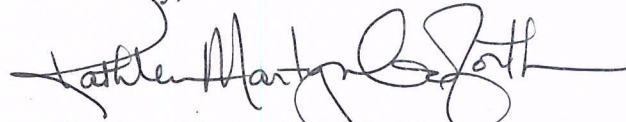
Based on the potential for unpermitted discharges to enter surface waters, we have rated the DSEIS as *Environmental Concerns – Insufficient Information (EC-2)* (see enclosed “Summary of Rating Definitions”). We recommend that the Final EIS carefully evaluate and disclose whether there would be a discharge of pollutants to Willow Creek from the wastewater treatment system, and identify all Federal permits, licenses, and other entitlements that must be obtained to implement the proposal, per 40 CFR 1502.25(b). Please contact Jamie Marincola in EPA Region 9’s Water Division, NPDES Permits Office, at 415-972-3520 or marincola.jamespaul@epa.gov, for additional information regarding NPDES permitting.

Subsurface disposal to leachfields is regulated by EPA as a Class V well under the Underground Injection Control (UIC) Program and requires registration and operation in a manner that will not contaminate underground sources of drinking water. The installation and calibration of subsurface disposal lines should be closely monitored by the responsible engineer, along with development of a monitoring program that will ensure the subsurface effluent disposal system is operating effectively. Class V wells must be registered at: <http://www2.epa.gov/uic/forms/underground-injection-wells-registration>. The EPA Region 9 contact for the UIC program is Leslie Greenberg, who can be reached at 415-972-3349 or greenberg.leslie@epa.gov.

The DSEIS states that the Tribe would obtain any necessary operating permits from the U.S. EPA to ensure that proposed new or modified commercial and industrial equipment and operations comply with federal Clean Air Act requirements, including applicable federal New Source Review (NSR) rules. A minor NSR permit would be required prior to construction if the aggregate potential to emit from stationary emission units at the facility would exceed the minor NSR thresholds listed in Table 1 at 40 CFR 49.153. The operational air emissions in Table 5-2 of the DSEIS are well below those thresholds, but the estimates appear low for the equipment identified. We recommend that the project proponent use the potential to emit, instead of projected actual emissions, when calculating emissions to determine permitting applicability. If you have any questions regarding Tribal NSR, please contact Lawrence Maurin in EPA Region 9’s Air Division at (415) 972-3943 or maurin.lawrence@epa.gov.

EPA appreciates the opportunity to review this DSEIS. When the Final SEIS is released for public review, please send one copy to the address above (mail code: ENF-4-2). If you have any questions, please contact me at (415) 972-3521, or contact Karen Vitulano, the lead reviewer for this project, at 415-947-4178 or vitulano.karen@epa.gov.

Sincerely,



Kathleen Martyn Goforth, Manager
Environmental Review Section

Enclosure: Summary of EPA Rating Definitions

cc: Erica Pinto, Chairwoman, Jamul Indian Village
Richard Tellow, Environmental Director, Jamul Indian Village

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

“LO” (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

“EC” (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

“EO” (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

“EU” (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

Category “1” (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category “2” (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category “3” (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.